IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2586 of 2006

Mr.Baburao Ganpatrao Wankhede Applicant
Vs.
Mr.Santosh Prabhakar Dandekar & anr. Respondents

Mr.Vilas Mali for applicant.
Mr.D.R.More, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 10, 2007.

P.C.

. Heard Mr.Mali, the learned counsel for the applicant who had filed Summary Case No.143 of 2005 under Section 138 of the Negotiable Instruments Act, 1881 against the present respondent no.1 and the said complaint came to be dismissed by the learned Judicial Magistrate, First Class at Pali as per his judgment and order dated 18/5/2006 thereby acquitting the accused i.e. the respondent no.1. This is an application seeking leave to appeal under Section 378(4) of Cr.P.C.

. The complaint has been dismissed on two grounds, (a) that the complaint was time barred and

no evidence was placed on record in justification of the delay and (b) the transaction for which cheque bearing no.568678 dated 1/4/2005 in the sum of Rs.70,000/- was issued in favour of the complainant was not in discharge of any enforceable liability of the accused.

. I have gone through the depositions of the complainant as well as the accused as have been placed on record and it is true that in his oral evidence the complainant has not stated anything in support of his prayer for condonation of delay though a separate application for the same was filed along with the complaint. On the second point it is admitted that the loan transaction was between the complainant and the brother of the accused. For discharge of his liability the brother of the accused had issued a cheque which was dishonoured and, therefore, the complainant had filed SC No.332 of 2002 which was withdrawn by the complainant. It was stated that there was a compromise between the complainant and the brother of the respondent no.1 on 13/9/2004 and the respondent no.1 - accused took over the liability of his brother and issued the cheque. The respondent no.1 stepped in the witness box and

clearly stated that there was no transaction between the complainant himself and on the other hand the complainant being Director of Adarsh Patsanstha, Pali, he threatened the respondent no.1 to remove him from service if the respondent failed to repay the amount due to his brother. The respondent is employed as a Clerk with Adarsh Patsanstha, Pali and, therefore, to save his job, he had issued a cheque by way of security. This evidence in the examination-in-chief could not be impeached on any count in his cross-examination and, therefore, the findings recorded by the trial Court do not call for any reconsiderations at the hand of this Court.

. Leave to appeal is refused and the application is rejected.

(B.H.MARL